

# MEMORANDUM

TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

**TO: Chair and Members  
Department of Family and Protective Services Council**

**FROM: Howard G. Baldwin, Jr.  
Commissioner**

**SUBJECT: Agenda Item 6b: Recommendation to propose rule changes  
in 40 TAC Chapter 700, Subchapter M, relating to Substitute  
Care Services**

**DATE: April 20, 2012**



## BACKGROUND AND PURPOSE

The provisions in Subchapter M, Substitute Care Services, were transferred to DFPS from the Department of Human Services when DFPS became a stand-alone agency in 1994. While relevant state and federal laws have undergone numerous revisions in the ensuing years, only minor adjustments have been made to the rules in Subchapter M. Moreover, many of the provisions in Subchapter M merely restate legal duties imposed on DFPS by Titles IV-B and IV-E of the Social Security Act, Subtitle E of Title V of the Texas Family Code, and Child-Care Licensing (CCL) minimum standards adopted under authority of Chapter 42 of the Human Resources Code. Because many of the provisions in Subchapter M are redundant, unnecessary, or no longer accurately reflect controlling state or federal laws or CCL minimum standards, DFPS is proposing to repeal the entire subchapter and replace it with a more streamlined subchapter that improves readability, replaces outdated terminology with current terminology, more clearly identifies the controlling state and federal laws, and more accurately sets forth the core principles that necessarily guide DFPS in the provision of substitute care services.

## DETAILED SECTION ANALYSIS AND DISPOSITION TABLE

<b>Current Rule Sections</b>	<b>Proposed Action; New Rule Section</b>	<b>Summary Explanation of Proposed Action</b>
700.1301	Repeal	The definition of substitute care services is contained in new §700.1301. The guiding principles for when DFPS seeks to place a child in substitute care have been deleted, because the legal standards for removal are mandated by state and federal laws. The "goals" and "objectives" reflected in current subsections (c) and (d) are revised and incorporated into new §700.1305 and §700.1309.
700.1302	Repeal	The provisions in this section that describe DFPS responsibilities when providing substitute care services are revised and incorporated into new §700.1305 and §700.1309.

<b>Current Rule Sections</b>	<b>Proposed Action; New Rule Section</b>	<b>Summary Explanation of Proposed Action</b>
700.1320	Repeal	<p>The description of the acceptable settings in which DFPS may place children is moved to new §700.1307, and revised to:</p> <ul style="list-style-type: none"> <li>(1) eliminate some placement settings that no longer exist; and</li> <li>(2) add placement settings that are currently used, i.e. placement of a child in the child's own home; placement in a residential child-care setting properly licensed or approved by another state or Tribal licensing authority; placement of youth 18 years and older in "supervised independent living" (SIL) settings; and any other placement setting ordered by a court.</li> </ul> <p>The preference for relative placements is moved to new §700.1309, and reworded for consistency with federal law. The provisions relating to "unauthorized placements" (i.e. children on runaway status whose whereabouts are known) are moved to new §700.1333, and revised to incorporate DFPS duties under the Texas Family Code with respect to missing children and to clarify DFPS responsibilities when youth in an unauthorized placement are located.</p>
700.1321	Repeal	<p>Provisions describing the types of residential child-care settings are eliminated, as this information can be found in greater and more accurate detail in CCL rules in Chapter 748, General Residential Operations, and Chapter 749, Child-Placing Agencies. However, the different types of settings that a child in DFPS conservatorship may be placed are contained in new §700.1307. In addition, the considerations that dictate when a child may be placed in a residential child-care setting that is more restrictive than a foster home are contained in new §700.1311, including limitations regarding placement of children under five years in a general residential operation that provides emergency care. Other provisions restricting placement settings by age are eliminated because all children, regardless of age, must be placed in the least restrictive setting available that can meet the child's needs and serve the child's best interest.</p>

<b>Current Rule Sections</b>	<b>Proposed Action; New Rule Section</b>	<b>Summary Explanation of Proposed Action</b>
700.1322	Repeal	Provisions describing the "types of care" provided in various residential child-care settings are no longer consistent with types of care described in CCL minimum standards. This information is not added to a new rule, as this information can be found in greater and more accurate detail in CCL rules in Chapters 748 and 749. In addition, information regarding the Level-of-Care system can be found in greater and more accurate detail in Subchapter W of this Chapter (relating to Level-of-Care Service System).
700.1323	Repeal	Provisions relating to notification of parents regarding placement are included in new §700.1317. Provisions relating to how Child Protective Services (CPS) resolves placement disputes with foster parents are eliminated because they are not consistent with current practice. Federal law requires that the child welfare agency have ultimate discretion to determine placement of a child, subject only to the authority of the court to order a different placement after considering the agency's recommendations.
700.1330	Repeal	Provisions defining the "case plan" and contents of the plan are revised and included in new §700.1319, along with references to the state and federal statutory requirements relating to case planning. Provisions relating to revisions of the case plan are added to new §700.1325.
700.1331	Repeal	Provisions that describe the contents of the "child service plan" are included in new §700.1321, with minor revisions for conformity with current law and CPS practice. The 45 day-time frame for initial development of the child service plan is covered in new §700.1319.
700.1332	Repeal	Provisions describing the family service plan are revised for greater conformity with current law and included in new §700.1323. Some procedural requirements that are detailed in Chapter 263 of the Texas Family Code (such as documenting a parent's refusal to participate in the planning process) are not included because they are already controlled by Chapter 263 and incorporated into policy. The 45- day time frame for initial development of the family service plan is covered in new §700.1319.

<b>Current Rule Sections</b>	<b>Proposed Action; New Rule Section</b>	<b>Summary Explanation of Proposed Action</b>
700.1333	Repeal	Provisions concerning review and updates of the case plan are revised for greater conformity with state and federal law, as well as CCL minimum standards, and included in new §700.1325, with redundant provisions omitted. Provisions concerning participation in case plan reviews are included with minor revisions in new §700.1321.
700.1334	Repeal	The requirement that a case plan be revised after every change in placement is covered in new §700.1325. The 30-day time frame is omitted, because some service planning time frames are controlled by CCL minimum standards relating to the admission of a new child by a child-care facility, and thus DFPS must retain the flexibility to comply with CCL minimum standards. Federal law allows up to 60 days for revision of the case plan following a change in placement.
700.1340	Repeal	Provisions relating to visitation by parents are deleted, as this issue is interrelated with the "reasonable efforts" requirements of Title IV-E and the Texas Family Code, and is ultimately controlled by court orders. Provisions relating to travel are deleted because §264.122 of the Texas Family Code controls out-of-country travel procedures, and most courts have their own local rules or practices concerning out-of-state travel. Provisions relating to acceptable forms of discipline are revised and included in new §700.1331. Provisions relating to disaster planning are deleted because disaster planning has undergone substantial revisions under state law over the past decade and continues to be refined, making this issue better suited to policy than rule.
700.1342	Repeal	None of the provisions in this rule are proposed in new Subchapter M because the provisions merely restate requirements in the Texas Family Code relating to providing prospective adoptive parents with copies of a child's Health, Social, Educational and Genetic History (HSEG) and other DFPS case records, or restate detailed internal policies and procedures more appropriate for policy than rule.
700.1343	Repeal	None of the provisions in this rule are proposed in new Subchapter M because the provisions merely restate requirements in the Texas Family Code relating to the redaction of confidential information from adoption records, or restate detailed internal policies and procedures more appropriate for policy than rule.

<b>Current Rule Sections</b>	<b>Proposed Action; New Rule Section</b>	<b>Summary Explanation of Proposed Action</b>
700.1350	Repeal	Provisions stating the circumstances under which child day-care services can be provided are repealed due to the need for maximum flexibility to establish eligibility criteria in policy when funding availability changes over time. The provision relating to consent for contraceptive services is repealed because this provision as currently worded is too broad, and this issue is controlled by Chapters 32 and 266 of the Texas Family Code.
700.1351	Repeal	Provisions relating to medical and dental services are moved with only minor, non-substantive drafting changes to new §700.1329.
700.1352	Repeal	Provisions relating to placement of children with intellectual disabilities and related conditions in child-care facilities that provide treatment services are condensed and added to new §700.1313.
700.1353	Repeal	Provisions relating to placement of children with intellectual disabilities and related conditions in an intermediate care facility for persons with intellectual disabilities (ICF-ID), or a home and community-based services (HCS) setting, are condensed and added to new §700.1313. The current CPS policy, requiring approval by the Assistant Commissioner for CPS, or that person's designee, of all placements in an ICF-ID or HCS four-bed group home, is added to the new rule.
700.1354	Repeal	Provisions relating to placement of children in nursing homes are condensed and added to new §700.1315. The current CPS policy, requiring approval by the Assistant Commissioner for CPS, or that person's designee, of all placements in a nursing home, is added to the new rule.
700.1355	Repeal	Provisions relating to sibling visitation and contact are included in new §700.1327, with only minor revisions to more closely reflect requirements in federal law.
	New 700.1301	This rule defines substitute care services, which are the placement, case management, treatment, and other services provided to support children in DFPS conservatorship, as well as their parents and caretakers. The term also includes the services provided to young adults in extended foster care.
	New 700.1303	This rule provides definitions for terms used in Subchapter M.
	New 700.1305	This rule identifies the state and federal statutory provisions that control the delivery of substitute care services and articulates core requirements from Title IV-E of the Social Security Act.

<b>Current Rule Sections</b>	<b>Proposed Action; New Rule Section</b>	<b>Summary Explanation of Proposed Action</b>
	New 700.1307	This rule describes all of the acceptable placement options in which DFPS may place a child.
	New 700.1309	This rule describes the factors that must be considered when determining whether a placement is in the child's best interest and can meet the child's special needs, consistent with requirements in state and federal law. Federal law requires that children be placed in the least restrictive, most family-like setting consistent with the best interest and special needs of the child.
	New 700.1311	This rule describes considerations that apply when selecting a placement other than a relative or other person with whom the child has a long-standing and significant relationship (fictive kin). Pursuant to requirements in Title IV-E of the Social Security Act, DFPS must consider giving preference to placement of children with relatives, which may include fictive kin. When such a placement is not available or in the child's best interest for other reasons, this rule sets forth the factors that may require placement in a more restrictive setting than a foster home.
	New 700.1313	This rule describes the special considerations that must be followed when placing children with intellectual disabilities or related conditions, including a requirement for approval of the Assistant Commissioner of CPS or her designee before placing a child in an ICF-ID or four-bed HCS group home.
	New 700.1315	This rule describes the special considerations that must be followed when placing children with life-threatening medical conditions in a nursing home, including a requirement for approval of the Assistant Commissioner of CPS or her designee.
	New 700.1317	This rule requires notification of parents regarding a child's current placement, subject to limited exceptions in accordance with state and federal law.
	New 700.1319	This rule defines the term "case plan" and sets forth a few basic requirements relating to the case plan. Title IV-E of the Social Security Act requires each child in the state's conservatorship to have a "case plan" that meets certain requirements. Texas satisfies the federal case plan requirements through a combination of a "child service plan" and a "family service plan."
	New 700.1321	This rule describes the child service plan requirements, including the persons who must participate in the development of the plan and are entitled to a copy of the plan.

<b>Current Rule Sections</b>	<b>Proposed Action; New Rule Section</b>	<b>Summary Explanation of Proposed Action</b>
	New 700.1323	This rule describes the family service plan requirements, which are the same as the service plan requirements in Chapter 263, Texas Family Code. The rule also specifies when the family service plan can be waived or discontinued, as provided under the Texas Family Code and Title IV-E of the Social Security Act.
	New 700.1325	This rule specifies the required frequency for reviews and updates of a case plan, as required by state and federal law, CCL minimum standards, and in some instances, a residential child-care contract.
	New 700.1327	This rule restates requirements in Title IV-E of the Social Security Act for frequent visitation or other ongoing interaction between siblings who are not placed together, unless such visitation or interaction is not in a sibling's best interest.
	New 700.1329	This rule states it is the department's duty to ensure appropriate medical care for a child in DFPS conservatorship, and specifies certain types of medical care that must be provided. The rule also cites the state law controlling consent for medical services.
	New 700.1331	This rule states the department's guidelines regarding appropriate forms of discipline for a child in DFPS conservatorship.
	New 700.1333	This rule states DFPS responsibilities, as provided under the Texas Family Code, when a child in substitute care is missing or abducted and provides that in the case of a child on runaway status who is living in an unauthorized placement, DFPS may not pay the costs of that placement.
700.1502	Amend	A non-substantive, conforming amendment was made to this rule to replace an obsolete cross-reference to a rule in Subchapter M.
700.1718	Amend	A non-substantive, conforming amendment was made to this rule to replace an obsolete cross-reference to a rule in Subchapter M.
700.1726	Amend	A non-substantive, conforming amendment was made to this rule to replace an obsolete cross-reference to a rule in Subchapter M.

## STATUTORY AUTHORITY AND STATUTES AFFECTED

The modification is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Department of Family and Protective Services Council shall study and make

recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department. This modification implements Title IV-E of the federal Social Security Act, which sets forth the state's obligations with respect to the provision of substitute care services, including case planning, for children removed into the state's conservatorship; and Chapter 263, Family Code, which sets forth state requirements for service planning for children in DFPS conservatorship.

#### FISCAL IMPLICATIONS

(a) Fiscal Impact. For each of the first five years that the rules will be in effect there will not be costs or revenues to state or local government as a result of enforcing or administering this section.

(b) Public Costs and Benefits. For each of the first five years that the proposed sections will be in effect, the public benefit anticipated as a result of the rule change will be that the Department's rules concerning substitute care services are streamlined for greater usability and updated to accurately reflect both state and federal law concerning substitute care services. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

(c) Impact on Business. There is no anticipated adverse impact on small, micro, and large businesses as a result of the proposed rule change because the proposed rule change should not affect the cost of doing business; does not impose new requirements on any business; and does not require the purchase of any new equipment or any increased staff time in order to comply.

(d) Local Employment Impact and Takings Statements. No local employment impact statement was required for this rule. The agency is not required to complete a takings impact assessment regarding the proposed section(s).

(e) Technology Impact. There is no anticipated impact on technology as a result of the proposed rule change.

#### STAKEHOLDER INPUT

Stakeholder input will be considered as it is received during the period for comments on the rule.

#### RECOMMENDATION

It is recommended that the Council consider the proposed rule action, as discussed in this memorandum, and that the Council recommend proposal, with or without changes to the rules as they are attached to this memo.

#### ATTACHMENTS

Attached is a copy of the proposed change to the rule section as staff recommended for submittal to the *Texas Register*.